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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/646,119	10/30/2000	Gunter Halm Schlager	P19790	3782
7055 7590 05/04/2009 GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191				
EXAMINER FORTUNA, JOSE A				
ART UNIT 1791		PAPER NUMBER		
NOTIFICATION DATE 05/04/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GUNTER HALMSCHLAGER, FRANZ STELZHAMMER,
ERICH BRUNNAUER, MANFRED GLOSER, MANFRED FEICHTINGER,
THOMAS NAGLER, JOHANNES STIMPFL, JOSEF BACHLER
and CHRISTOPH MERCKENS

Application 09/646,119
Technology Center 1700

Mailed: May 1, 2009

Before KRISTA ZELE *Deputy Chief Appeals Administrator*
ZELE, *Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on June 18, 2008. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

APPEAL BRIEF

SUMMARY OF CLAIMED SUBJECT MATTER

The Appeal Brief filed August 27, 2007, is defective because the Summary of Claimed Subject Matter does not map the claimed invention to the independent claims as set forth in 37 CFR § 41/37 (c)(1)(v) which states:

(v) *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

There is no delineation as to where separately independent claims 53 and 81 are mapped to the specification, by page and line number.

Correction is required. MPEP § 1205.03 states:

When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and §711.02(b).

MISSING PRIOR ART REFERENCE

The following prior art reference cited in paragraph 8 of the November 29, 2007 Examiner's Answer was not located in the Image File Wrapper (IFW)

Went

GB 2 283 766

May 1995

The above listed reference is needed to process the appeal properly.

Accordingly, it is ORDERED that the application is returned to the Examiner to:

- 1) hold the Appeal Brief filed on August 27, 2007, defective;
- 2) notify appellants to file a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v);
- 3) consider the paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v);
- 4) to have the above listed reference scanned into the IFW; and
- 5) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

KZ/eld

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